

**Letter of Findings Number: 07-0534**  
**Sales and Use Tax**  
**For the Tax Year 2007**

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**ISSUE**

**I. Sales and Use Tax—Imposition.**

**Authority:** IC § 6-2.5-1-1; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-5-8; IC § 6-6-6.5-8; IC § 6-6-6.5-9; IC § 6-6-6.5-10.6; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988).

Taxpayer protests the assessment of use tax on an airplane.

**STATEMENT OF FACTS**

Taxpayer is in the business of buying, selling, and managing aircraft. Taxpayer's owner is also involved in a variety of other business activities. After an investigation, the Indiana Department of Revenue ("Department") determined that Taxpayer owed use tax, interest, and penalty for the 2007 tax year. The Department found that Taxpayer had purchased an airplane without paying sales tax at the time of purchase, and assessed used tax on the purchase. Taxpayer protested this imposition of the tax. A hearing was held, and this Letter of Findings results. During the course of the protest, Taxpayer was asked, but failed to provide additional information including flight logs. Additional facts will be supplied as required.

**I. Sales and Use Tax—Imposition.**

**DISCUSSION**

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

The Department found that Taxpayer had purchased an airplane without paying sales tax at the time of purchase, and assessed used tax on the purchase.

IC § 6-2.5-2-1 provides:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

IC § 6-2.5-3-2(a) provides:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Accordingly, Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 et seq. An exemption from the use tax is granted for transactions where the gross retail tax ("sales tax") was paid at the time of purchase pursuant to IC § 6-2.5-3-4.

Additionally, IC § 6-6-6.5-8(d) provides for the payment of sales or use tax on an airplane, as follows:

A person shall pay the gross retail tax or use tax to the department on the earlier of:

- (1) The time the aircraft is registered; or
- (2) not later than thirty-one (31) days after the purchase date; unless the person presents proof to the department that the gross retail tax or use tax has already been paid with respect to the purchase of the aircraft or proof that the taxes are inapplicable because of an exemption.

Taxpayer contends that since Taxpayer's use of the airplanes qualified for an exemption, Taxpayer did not pay the sales or use tax at the time of purchase. Taxpayer asserts that the Taxpayer's purchase of the airplane, which Taxpayer currently holds in inventory as for sale, meets the resale exemption.

The resale exemption is provided in IC § 6-2.5-5-8(b), as follows:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property.

IC § 6-2.5-3-4(a)(2) allows for a use tax exemption for property that is acquired in a transaction that is exempt from sales tax under a provision in IC § 6-2.5-5 if the property is being stored, used, or consumed for the purpose for which the property was exempted.

In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456

(Ind. Ct. App. 1988).

The Department refers to IC § 6-6-6.5-10.6(d), which provides:

An inventory aircraft held for more than eighteen (18) months is no longer considered aircraft inventory and is treated as property of a nondealer. The registration fee and all applicable taxes are due thirty-one (31) days after the date the eighteen (18) month period ends.

Since Taxpayer held this airplane for over eighteen months, the airplane is no longer considered an inventory item and is considered the property of a nondealer. Thus, an airplane that is not considered inventory/property of a dealer is not being held for resale. Therefore, the airplane, not held for resale and stored, used, or consumed in Indiana, is subject to use tax.

During the course of the protest, Taxpayer submitted documentation demonstrating that the airplane was unusable because the engine was under repairs for a period of fifteen months. Taxpayer maintains that since the airplane was unusable, the airplane qualifies for the dismantled aircraft exemption found at IC § 6-6-6.5-9(a)(5).

IC § 6-6-6.5-9(a)(5) provides, as follows:

An aircraft which has been scrapped, dismantled, or destroyed, and *for which the airworthiness certificate and federal certificate of registration have been surrendered to the Federal Aviation by the owner. (Emphasis Added).*

However, to meet this exemption Taxpayer must have surrendered the airplane's airworthiness certificate and federal certificate of registration to the Federal Aviation Administration. Since Taxpayer failed to surrender the airworthiness certificate and federal certificate of registration, Taxpayer does not meet this exemption.

Nonetheless, even if Taxpayer could demonstrate that it met the dismantled inventory exemption found at IC § 6-6-6.5-9, Taxpayer aircraft would not be considered inventory because Taxpayer also does not comport with IC § 6-6-6.5-10.6(a).

IC § 6-6-6.5-10.6(a) provides, as follows:

A dealer may not use inventory aircraft for any purpose other than for resale and demonstration flights unless the dealer charges the fair market rental or lease value and complies with all applicable statutes, rules, and procedures of the department.

During the course of the protest, Taxpayer admitted to using the airplane for purpose other than resale. Taxpayer's owner stated that it used the airplane, both before and after the time period when the airplane's engines were under repair, by taking the airplane on "long trips" for Taxpayer's owner's personal and Taxpayer's owner's other business' needs. Since Taxpayer used the airplane for non-exempt purposes, under IC § 6-6-6.5-10.6(a) the airplane is not considered an inventory item.

Moreover, since IC § 6-2.5-3-4(a)(2) requires that the taxpayer claiming the exemption under IC § 6-2.5-5 to use the property only for exempt purposes, in this case for resale purposes, and Taxpayer made non-exempt uses of the airplane, then Taxpayer's purchase does not qualify for the resale exemption. Therefore, Taxpayer's use of the airplane is subject to use tax.

#### **FINDING**

The Taxpayer's protest is respectfully denied.

*Posted: 04/30/2008 by Legislative Services Agency*

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